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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1952. No.

AARON KEMBLE,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, AARON KEMBLE, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on September 4, 1952.

SUMMARY STATEMENT OF MATTER INVOLVED.

The petitioner was indicted under Section 5 of the Act of July 3, 1946, the so-called Hobbs Act,* was tried in the District Court of New Jersey and upon conviction was sentenced to a term of two years imprisonment. The union, Truck Drivers and Helpers Union, Local 676, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, of which petitioner was a member, was jointly indicted with petitioner, tried and convicted and was placed on probation for three years. The joint indictment charged defendants with acts of violence pursuant to their plan to obstruct commerce by extortion.

Appeals were taken to the Court of Appeals for the Third Circuit which, on September 4, 1952, affirmed the conviction of petitioner and reversed the conviction of the Union.

The evidence at the trial disclosed that there was an interstate shipment from Pottstown, Pennsylvania to the RCA-Victor plant in Camden, New Jersey. In the course of the unloading of the truck, petitioner, a business agent of the teamsters union with which RCA had a valid closed shop agreement, requested that a union helper be employed to unload the truck and to pay him a day's wage of $10.00. When this request was refused, a personal altercation ensued between the driver and petitioner, during the course of which the air was let out of the front tires of the truck by certain unidentified person or persons. It is in evidence that petitioner was a representative of the union whose duty it was to determine whether non-union trucks were unloading in Camden.

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* 60 Stat. 420, 18 U. S. C. 420(d) (1946 ed.).

Neither defendant offered any evidence, but moved for judgments of acquittal on the ground that the Hobbs Act was inapplicable. The motions were denied and, following conviction, both defendants moved for judgments of acquittal or, in the alternative, for new trials. An appeal to the Court of Appeals followed the District Court's refusal of both motions.

The appeal was first argued before the Court of Appeals on October 1, 1951. Thereafter, on March 12, 1952, an order was entered directing a reargument before the Court en banc; said argument was heard on April 21, 1952 and resulted in the judgments of September 4, 1952 above-referred to.

The majority of the Court of Appeals held that "payment of money for imposed, unwanted and superfluous services such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce is within the language and intendment of the statute."

Insofar as this petitioner's appeal was concerned, there were three dissenting opinions. Judge McLaughlin was of the opinion that petitioner's motion for judgment of acquittal should have been granted since his "entire purpose * * * was to obtain the employment of a competent union helper by the trucker to do the unloading" and such activity was not within the purview of the Hobbs Act.

Both Chief Judge Biggs and Judge Staley were of the opinion that petitioner should have been awarded a new trial for the reason that the trial judge had failed to give adequate instructions on criminal intent.*

The dissenting Judges all recognized the importance of the case from the point of view of organized labor and questioned the applicability of the statute involved to the facts of this case.

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*Both judges held that defendant's requested instruction No. 6 should have been granted. This request was:

"6. It is not the purpose of the law under which these defendants have been indicted to prevent labor unions from attempting to obtain employment for their members. The use of violence or the threat of violence for such a purpose, while possibly punishable under some law, is not punishable under this indictment."

BASIS OF JURISDICTION.

The jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 928 (28 U. S. C. A. 1254 (1)).

The judgment to be reviewed, as above stated, is the judgment of the United States Court of Appeals for the Third Circuit, entered on September 4, 1952, affirming the judgment of the United States District Court for the District of New Jersey.

QUESTIONS PRESENTED.

1. May an individual member of a labor union, jointly indicted with that union for violation of the Hobbs Act, properly be convicted where the evidence discloses no plan to obstruct interstate commerce by extortion?

2. Where a union and one of its agents are jointly indicted for violating the Hobbs Act in that they committed violence on one's person and property "in furtherance of *their* * * * plan and purpose to obstruct commerce * * * by extortion," may the agent properly be found guilty if the union is acquitted?

3. May an individual member of a labor union properly be convicted of violation of the Hobbs Act where there is no evidence that he is a professional gangster or racketeer or that he attempted to benefit personally from his activity?

4. May an individual member of a labor union properly be convicted of violation of the Hobbs Act where the evidence discloses that the sole purpose of his activity was to obtain a day's work for a union member?

5. Was it not error for the trial court to fail to instruct the jury on the question of criminal intent?

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. This case presents important questions of the construction and application of the Act of July 3, 1946 (60 Stat. 420, 18 U. S. C. A. 420(d) (1946 ed.) the so-called Hobbs Act.*

2. This is a case of first impression and in view of the wide differences of opinion expressed by the Court below it is of vital importance for this Court to determine how the Hobbs Act is to be applied.

3. The opinion of the majority of the Court below is inconsistent with the opinion of this Court in the case of *United States v. Local 807*, 315 U. S. 521; 86 L. ed. 1004, in which the original "Anti-Racketeering Act" of 1934 was construed, specifically insofar as the evil sought to be corrected by the legislation is concerned.

4. The construction of the statute by the majority will have far-reaching effects on the rights of organized labor.

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*So stated by the majority of the court below. As above-stated, the case was argued before the court on two separate occasions and produced four separate opinions.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ALBERT K. PLONE,

LESTER J. SCHAFFER,

WILLIAM A. GRAY,
Counsel for Petitioner.

GRAY, ANDERSON, SCHAFFER
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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

OPINIONS BELOW.

The opinions of the Court of Appeals for the Third Circuit (R. 175, et seq.), filed September 4, 1952, have not yet been officially reported.

STATEMENT OF JURISDICTION, QUESTIONS PRESENTED AND FACTS.

For brevity there will not be repeated here the statement of jurisdiction, the questions presented and the pertinent factual matter, all of which appear in the petition to which this brief is annexed.

ARGUMENT.

I.

We submit that a reading of the opinion of this Court in the case of *United States v. Local 807*, supra, along with the legislative history of the statute involved, clearly demonstrates the error of the majority in the Court below.

This Court, specifically referring to the account of the legislative proceedings said (page 531):

> "* * * But it [the account of the legislative proceedings] does contain clear declarations by the head of the Department which drafted the section and by the sponsor of the bill in Congress, first, that the elimination of terroristic activities by *professional gangsters* was the aim of the statute, and second, that no interference with traditional labor union activities was intended.
>
> "It may be true that professional rackets have sometimes assumed the guise of labor unions * * * and it may also be true that labor organizations of good repute and honest purpose can be misdirected and become agencies of blackmail. Nevertheless, Congress plainly attempted to distinguish militant labor activity from the other and to afford it ample protection."

This Court went on to say (page 535-536):

> "But we do believe that they are not 'the activities of predatory criminal gangs of the Kelly and Dillinger types' at which the Act was aimed, and that, on the contrary, they are among those practices of labor unions which were intended to remain beyond its ban."

We are, of course, well aware of the fact that this Court was there considering the original Act of 1934. We are equally aware of the fact that the 1946 Act omitted the bona fide wage exemption contained in the prior Act. The significant point is, however, that the amending Act in no way changed the *raison d'etre* of the original Act. In other words, the evil sought to be corrected by the original statute was continued in the later statute, that evil being "the elimination of terroristic activities by professional gangsters * * * of the Kelly and Dillinger types."*

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* **United States v. Local 807, 315 U. S. 521, 530.**

We consider it unnecessary at this time to burden the Court with a recitation of congressional statements concerning the statute under which petitioner was indicted. Suffice it to say that the original act differed from the 1946 Act, aside from differences in draftsmanship, in only two respects: (1) the 1934 Act provided that prosecutions thereunder might be commenced "only upon the express direction of the Attorney General," but the 1946 Act contains no such limitation; and (2) the 1934 Act expressly exempted from its prohibitions "the payment of wages by a bona fide employer to a bona fide employee" and provided furthermore that the terms "property," "money" or "valuable considerations" used therein should "not be deemed to include wages paid by a bona fide employer to a bona fide employee"; this limitation also is omitted in the 1946 Act.

We submit that, obviously, the main purpose for the passage of the original Act remained unchanged and the Congressional reports amply confirm this fact.

The record in this case clearly demonstrates that petitioner was seeking to enforce a closed shop contract by preventing non-union unloading and to obtain a day's work for a union member. The majority of the court below held that since the work was unwanted and superfluous, petitioner's violent attempt to enforce his request is within the prohibitions of the statute (R. 179). The union was exonerated on the theory that it had neither authorized nor ratified the violence.

The majority of the court below, we submit, placed its emphasis on the alleged violence without first determining whether the conduct of petitioner amounted to extortion. The question of prime importance—to wit, whether an attempt to compel a non-union employer to hire an unwanted union man is extortion—is wholly ignored by the court.

We submit that since traditional labor union activity was expressly excluded from the operation of the Hobbs Act, it seems ludicrous to find that the fundamental reason for the existence of any labor union—obtaining employment

for union members—should be included. In our opinion, it can never be considered *extortion* for a union honestly to seek employment for one of its members, where the sole purpose is to obtain a day's wages for that member. Assuming, arguendo, that such conduct violates some law, it certainly was not the intent of Congress to hold it violative of the Hobbs Act. If this were not so, at least in theory, any strike to compel union recognition might well result in a violation of the Act.

It is of vital important to analyze carefully what the Act itself condemns. We are here concerned with Section 5, which makes illegal violence, not as such, but only in furtherance of a plan to obstruct commerce by extortion. As we interpret the Act, no matter what the extent of the violence, there is no violation unless it was in furtherance of a plan to extort.

Admittedly, the jury, believing the Government's witnesses, was justified in finding petitioner guilty of violence. Also, his conduct constituted a violation of some State law. But we are here concerned solely with whether the petitioner's conduct was in furtherance of a plan to extort. We submit there is no law or case warranting such a finding. Indeed, the cases are to the contrary in holding that "The Act covers no action by a labor leader honestly acting for the members of his organization.": *United States v. Nick*, 122 F. 2d 660.

We have clearly in mind the type of case Congress intended to cover in adopting this statute. If, under the facts of this case, petitioner was a racketeer who schemed to compel a non-union trucker to pay $10.00 to him for the privilege of unloading his truck, which $10.00 found its way into petitioner's own pocket, we believe a case would be made out. But where all of the evidence points to the fact that a union member was to work and was to be paid a day's wages for that work, there can be no violation of the Act.

We respectfully submit that the evidence in this case

showed no "terroristic activities by professional gangsters" nor no attempt at personal enrichment by petitioner, but rather "militant labor activity" which Congress "plainly attempted to distinguish." That petitioner's conduct was not proscribed by the Act is abundantly clear, even in the dissenting opinion of the late Chief Justice Stone who said (*United States v. Local 807*, 315 U. S. 521, 541):

> "Even though the procuring of jobs by violence is not within the Act and though this includes the 'stand-by' job where no actual service is rendered, the granted immunity * * * does not extend to the case where the immediate object is to force the payment of money regardless of the victim's willingness to accept and treat the extortioner as an employee."

We submit that the activity of this petitioner was not within the statute under which he was indicted and that the petition should be granted to resolve the question.

II.

As heretofore mentioned, the union defendant was found guilty along with petitioner, but the court below reversed this conviction and entered a judgment of acquittal. Thus, for the first time in the case, there is raised the question of whether under this indictment and the facts of this case, petitioner may be properly found guilty in the absence of a like finding against the union.

Under the indictment, petitioner and defendant union were jointly indicted for threatening and committing violence in furtherance of *their* plan to obstruct commerce by extortion. Admittedly, the union did not participate in, authorize or ratify petitioner's acts of violence. But the majority of the court below stated (R. 182):

> "At most it can be said that in an effort to accomplish a *lawful mission* assigned by the union the business agent acted in an unlawful way not required by his mission and not shown to have been authorized by his principal." (Italics supplied.)

It is thus clear that the majority found nothing illegal in the union's policy of attempting to obtain employment for its members—at least, it was not extortion to so do. What, then, did petitioner do, aside from his alleged violence, other than to attempt to enforce this policy?

We submit that petitioner did nothing contra the policy of the union, which it was his duty to enforce. It is true that the methods employed by him exceeded his authority, but this should have no effect on the basic policy which he was seeking to enforce.

Our point is that if the plan was to obtain employment for union members—an admittedly "lawful mission,"— petitioner's subsequent violence could not convert that plan into extortion. It was never contemplated that Congress punish violence as such—it is only where that violence is in furtherance of a plan to obstruct commerce by extortion.

Thus, if there is no such plan ab initio, the occurrence of violence cannot create one.

This misconstruction of the law is forcibly illustrated in the opinion of Chief Judge Biggs where he states (R. 199):

> "If an individual in seeking employment threatened force, thereby obstructing commerce, *but neither committed nor attempted robbery or extortion* * * * would his conduct fall within the proscription of the Act? Looking only to the face of the statute my answer would have to be 'Yes,' but I cannot bring myself to believe that such was the Congressional intent." (Italics supplied.)

We respectfully submit that this is an incorrect analysis of the "face of the statute" and one adopted by the majority.

Section 5 thereof, under which petitioner was indicted, specifically provides that only when the threatened violence is in furtherance of a plan to obstruct commerce by robbery or extortion, is there a violation. Thus, under the facts referred to by Judge Biggs, there could be no possible violation if neither robbery nor extortion was present.

If the union had no plan to obstruct commerce by extortion, neither could the petitioner since on this record he was merely the agent whose duty it was to carry out his principal's policy.

We submit, therefore, that the acquittal of defendant union under this indictment necessarily requires the acquittal of petitioner.

We submit, further, that this Court for the first time has the opportunity to review the Hobbs Act and that it should grant the petition for certiorari in a matter so gravely important to organized labor.

III.

We respectfully urge this Court to grant certiorari and to reverse petitioner's conviction and order his acquittal for the reasons outlined above.

If, however, it is held that the Hobbs Act is applicable to this factual situation, we believe that petitioner should be awarded a new trial.

The view that a new trial should be granted is set forth in the separate dissenting opinions of Judges Biggs and Staley for the reason that the trial court had failed to instruct the jury on the question of criminal intent—and specifically had failed to grant petitioner's request to charge No. 6 (supra, page 3, n).

The opinion of this Court in *Morissette v. United States*, 342 U. S. 246, is controlling. Since the Act proscribes obstruction of commerce either by extortion or robbery and

since those crimes have always required a specific criminal intent, the failure of the trial court to give the requested instruction, or any other, bearing on the *mens rea*, was error.

The majority of the court below held that the Act was broad enough to include "in proper cases" the forced payment of wages and simply determined that this was a proper case, giving no effect whatsoever to petitioner's state of mind. We submit that this was error and that the proper rule is stated by the two dissenting judges who consider the point.

Of course, if petitioner's intent were to compel the payment of wages with the idea of blackmail, conceivably the Act would be violated. But it is clear that there would not be a violation if his intent were merely to obtain employment for a member of his union.

The majority view, therefore, must be held erroneous since it conflicts with this Court's opinion in the *Morissette* case. We urge this Court to grant the within petition to resolve this conflict.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that this case is one which justifies the granting of a Writ of Certiorari and thereafter reviewing and reversing the adverse decision.

ALBERT K. PLONE,
LESTER J. SCHAFFER,
WILLIAM A. GRAY,
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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 373

AARON KEMBLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions in the court below, sitting *en banc* (R. 175–201), are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 4, 1952 (R. 201). The petition for a writ of certiorari was filed on October 2, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2), and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the obstruction of commerce by threats and actual violence to induce payment for an unwanted union helper is a violation of Section 5 of the Hobbs Act.

2. Whether the acquittal of the defendant union on the ground that there was insufficient evidence to impute to it liability for the acts of petitioner, its business agent, under the strict standard of criminal agency established by Section 6 of the Norris-LaGuardia Act, precludes a conviction of petitioner for his own criminal acts.

3. Whether an instruction in the words of the Hobbs Act that violence must have been committed or threatened with a "plan or purpose" to obstruct commerce by extortion as defined in the Act, adequately charged the necessary criminal intent.

STATUTES INVOLVED

The Act of July 3, 1946, 60 Stat. 420, 18 U. S. C. [1946 ed.] 420a–420e,[1] the so-called Hobbs Act, provides in pertinent part:

> SEC. 1. As used in this title—
>
> (a) The term "commerce" means (1) commerce between any point in a State, Territory, or the District of Columbia and

[1] This section was superseded at the time of the 1948 revision of the Criminal Code without consequential change. 18 U. S. C. [1948 rev.] 1951. A savings clause in the repealer, however, continued in effect the repealed version. Act of June 25, 1948, c. 645, Sec. 21, 62 Stat. 862.

any point outside thereof, or between points within the same State, Territory, or the District of Columbia but through any place outside thereof, and (2) commerce within the District of Columbia or any Territory, and (3) all other commerce over which the United States has jurisdiction; and the term "Territory" means any Territory or possession of the United States.

(b) The term "robbery" means the unlawful taking or obtaining of personal property, from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or anyone in his company at the time of the taking or obtaining.

(c) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

SEC. 2. Whoever in any way or degree obstructs, delays, or affects commerce, or the movement of any article or commodity in commerce by robbery or extortion, shall be guilty of a felony.

SEC. 3. Whoever conspires with another or with others, or acts in concert with another or with others to do anything in

violation of section 2 shall be guilty of a felony.

SEC. 4. Whoever attempts or participates in an attempt to do anything in violation of section 2 shall be guilty of a felony.

SEC. 5. Whoever commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of section 2 shall be guilty of a felony.

SEC. 6. Whoever violates any section of this title shall, upon conviction thereof, be punished by imprisonment for not more than twenty years or by a fine of not more than $10,000, or both.

TITLE II

Nothing in this Act shall be construed to repeal, modify, or affect either section 6 or section 20 of an Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, or an Act entitled "An Act to amend the judicial code and to define and limit the jurisdiction of the courts in equity, and for other purposes," approved March 23, 1932, or an Act entitled "An Act to provide for the prompt disposition of disputes between carriers and their employees, and for other purposes," approved May 20, 1926, as amended, or an Act entitled "An Act to diminish the causes of labor dis-

putes burdening or obstructing interstate or foreign commerce, to create a National Labor Relations Board, and for other purposes," approved July 5, 1935.

The Hobbs Act superseded the Anti-Racketeering Act of June 18, 1934, 48 Stat. 979, which provided in pertinent part as follows:

> SEC. 2. Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—
>
> (a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or
>
> (b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or
>
> (c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or
>
> (d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall

be punished by imprisonment from one to ten years or by a fine of $10,000, or both.

SEC. 3. (a) As used in this Act the term "wrongful" means in violation of the criminal laws of the United States or of any State or Territory.

(b) The terms "property," "money," or "valuable considerations" used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee.

STATEMENT

The Truck Drivers and Helpers Union, Local 676 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L. and petitioner, its business agent, were indicted and found guilty under a one-count indictment charging them with violating Section 5 of the Hobbs Act (18 U. S. C. [1946 ed.] 420 (d), *supra*), which makes it a crime, *inter alia,* to engage in acts of violence in furtherance of a plan or purpose to obstruct commerce by extortion. The evidence to support petitioner's conviction may be summarized as follows:

During the morning of May 13, 1947, Leonard, a truck driver employed by Dohler-Jarvis Corporation, transported by trailer-truck a load of merchandise from the company plant in Pottstown, Pennsylvania destined for the R. C. A. Victor plant at Camden, New Jersey, and to other

consignees. He backed up the trailer-truck to a loading platform and commenced to unload the trailer, placing the cartons on pallets which were taken away by plant employees. (R. 7, 11–12.) When he had finished unloading all but about 20 or 30 cartons out of a total of 85 consigned to R. C. A., petitioner, who with four other men had driven up to the scene, approached the truck (Exh. G1, R. 39, 73–74, 79) and said, "Don't unload the truck anymore" (R. 12–13). Leonard replied, "this is my job and I will unload the truck" (R. 13). Petitioner told the truck driver that he "had to put a union man on the truck to unload it * * * because the union rules it" (R. 14), and that "there would be a day's wages for a man which was $10.00" (R. 57). Leonard told petitioner that he was not authorized to pay anyone, left the trailer, went into an office and called his "boss." He then returned to his unloading, and told petitioner that he was not authorized to pay anyone (R. 14, 53).

Petitioner cursed and threatened Leonard with violence (R. 15, 75, 82).[2] Although petitioner, who was on the ground, did not climb up on the trailer, he reached into the trailer and every time Leonard walked near him he would push some 50 pound cartons toward Leonard's legs (R. 20–22). Leonard testified that he was afraid to

[2] Petitioner later admitted to an F. B. I. agent that he had told Leonard that "he could cause a lot of trouble for him" if he unloaded his truck (R. 113–114).

come to the ground with five men standing there (R. 22).

At this juncture, building guards appeared in response to a call and a Camden police car arrived. Petitioner and the men he had with him left hurriedly in petitioner's automobile (R. 16, 39, 63–64). Leonard examined his truck and found that the front tires were flat, having been pierced with holes (R. 16, 51–52). One witness had seen someone stooping near one of the tires (R. 75). The fact that his tires had been pierced prevented Leonard from leaving and delayed his schedule five hours or more (R. 17).

About the time that petitioner left, Mr. O'Neall, the head of the local teamsters union, appeared (R. 63–64). Mr. O'Neall told the chief of the R. C. A. guard force "to tell the RCA if the RCA would not live up to the union contract with the union drivers, [they] could expect the same kind of trouble" (R. 40–41). It was stipulated at the trial that petitioner was a business agent of the defendant union (R. 9–10).

Petitioner was given a prison sentence of two years. The defendant union was placed on probation for a period of three years (R. 167–168).

On appeal, the Court of Appeals for the Third Circuit, sitting *en banc,* affirmed the judgment as to petitioner individually (R. 201), but reversed as to the union on the ground that there was insufficient evidence to impute to the union

liability for petitioner's acts under the standards established by Section 6 of the Norris-LaGuardia Act (R. 180–183). The majority were of the view that the Hobbs Act amendment of the 1934 Anti-Racketeering Act (see *supra*) after the decision of this Court in *United States* v. *Local 807,* 315 U. S. 521, clearly prohibited such acts as those proved against petitioner, i. e., violent obstruction of commerce to enforce "payment of money for imposed, unwanted and superfluous services" (R. 179). Two judges, dissenting as to petitioner, were of the view that, even as amended, the Hobbs Act did not extend to attempts "to obtain the employment of a competent union helper." (R. 183, 187, 189.) One of the dissenters, however, was of the view that petitioner was not entitled to a judgment of acquittal since there was evidence "from which a jury would have been warranted in finding that defendants did not in good faith seek employment" (R. 194); he thought that such issue should have been submitted to the jury under more explicit instructions that petitioner must have acted with felonious intent (R. 194). Judge Biggs, concurring in part and dissenting in part, was of the view that the Hobbs Act covers petitioner's conduct but that the judge's charge had not adequately defined the term "wrongful" as used in Section 1 (c) (R. 195–200).

ARGUMENT

1. The Hobbs Act, so far as here relevant, punishes anyone who commits or threatens physical violence to person or property in furtherance of a plan or purpose to obstruct commerce by extortion, extortion being defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear * * *." The indictment charged petitioner and the union with threatening physical violence against Leonard and committing physical violence against property (a truck) in Leonard's possession in furtherance of a "plan and purpose to obstruct, delay and affect commerce * * * by extortion" (R. 3–4). Petitioner does not dispute the sufficiency of the evidence to establish that he committed or threatened physical violence in attempting to compel Leonard or his employer to pay $10 for the unwanted services of a union member (R. 9–10). Indeed, the evidence is clear that neither Leonard nor his employer considered a helper necessary and that, in fact, Leonard had alone unloaded most of the consignment for R. C. A. before he was challenged by the petitioner. That is, petitioner does not deny the use or threat of physical violence or the plan or purpose to obstruct commerce. He contends, however, that "it can never be considered *extortion* for a union honestly to seek employment for one of its members, where the sole purpose is to obtain a day's wages for

that member" (Pet. 10), even though violence is used to compel, or in attempting to compel, an employer to pay wages to union members whom he would not have employed except for the violence (R. 9). In terms of this case, petitioner's contention is that neither the application of physical violence to an employer's property nor the threat of physical violence to a non-union workman, to compel the employment and payment of wages to a union member, constitutes "furtherance of a plan or purpose," under Section 5 of the Hobbs Act, to obstruct, delay or affect commerce "by * * * extortion," in violation of Section 2.

To the contrary, we contend that petitioner's conduct is clearly covered by the express terms of the Hobbs Act and that the Congress specifically intended the Act to reach such conduct.

The use of violence to compel an employer or his agent to pay wages for an unwanted employee obviously involves "obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear," and thus extortion as defined in the Hobbs Act.

The petitioner's argument that, despite its clear terms, the Act does not apply to the use of violence by labor unions and their officers to obtain payment of wages to union members, is based entirely upon this Court's decision in *United States* v. *Local 807,* 315 U. S. 521, under

the Anti-Racketeering Act of 1934 (supra, pp. 5–6). Section 2 of the 1934 Act in effect prohibited extortion in relation to commerce, but expressly excluded from the coverage of that Act "the payment of wages by a bona fide employer to a bona fide employee." Concluding that the Act was directed only at "the activities of predatory criminal gangs of the Kelly and Dillinger types," and not at the "ordinary activities of labor unions," this Court held, Chief Justice Stone dissenting, that this exception in the 1934 Act required the acquittal of defendants if "their objective and purpose was to obtain by the use or threat of violence the chance to work for the money but to accept the money even if the employers refused to permit them to work." 315 U. S. at 535, 536, 538. This holding assumed, of course, that the use of violence to compel an employer to pay wages for unwanted services was not prohibited by the 1934 Act.

It was precisely to cover this type of conduct, the use of violence to obtain payment for unneeded help, or in lieu of unneeded help, that the Hobbs Act amended the 1934 Anti-Racketeering Act after the decision of this Court in *United States* v. *Local 807, supra.*[3] The Hobbs Act eliminated

[3] The evidence in the *Local 807* case showed that defendants were stopping out-of-state truck drivers and either forcing them to turn their trucks over to a union driver for delivering and unloading in New York or to pay the equivalent of a day's wages.

the exception on which the *Local 807* decision was founded, thus clearly indicating that a violent demand for payment either of wages for unwanted service or in lieu of such wages was to be within the scope of the Act.

This objective of the Hobbs Act amendment is made abundantly clear by its legislative history. The Committee on the Judiciary of the House of Representatives set out the *Local 807* opinion in its entirety in its report on the Hobbs bill (H. Rep. 238, 79th Cong., 1st sess., pp. 2–9), and observed (*ibid.*, p. 10):

> * * * It is not the intention of the committee that title III be interpreted as authorizing any unlawful acts, particularly those amounting to robbery or extortion. The need for the legislation was emphasized by the opinion of the Supreme Court in the case of *United States* v. *Local 807* (315 U. S. 521).

During hearings on the bill, the *Local 807* decision was read into the record (pp. 88–95, of the Hearings before Subcommittee No. 3 of the Committee on the Judiciary, 77th Cong., 2d sess.) and extracts of it were cited to point up need for remedial legislation (*ibid.*, pp. 364–366, 399, 403–404).

Representative Hobbs observed (*ibid.*, p. 428):

> This bill is grounded upon the bedrock principle that crime is crime, no matter who commits it, and that robbery is robbery

> and extortion, extortion, whether the perpetrator has a union card in his pocket or not.

Earlier in the hearings, Representative Hobbs was asked whether the forced employment of a union man would come under the proposed legislation. The following colloquy ensued (*ibid.*, pp. 224–225):

> Mr. THOM. You get the same result; but you can't compel the union man to unload the truck. If they attempt to compel the employment of a union man by force, then they are committing a crime, as I see it.
>
> What is your idea about that, Mr. Hobbs? I am talking to your bill.
>
> Mr. HOBBS. I understood you were. I think the bill speaks for itself. I think that wherever there is any coercion, threat, or violence there is need of protection, whether in the hold-up of a truck coming through the tunnel, with a charge of $9.41 for a big truck and eight dollars and some cents for a small one, or the extortion of the $1.35 for a union employee. It all comes within the meaning of the bill, as I see it.
>
> * * * * *
>
> Mr. THOM. But where the man refuses to do the work—I don't see that that is covered by the bill.
>
> Mr. HOBBS. Of course, you cannot make a man work. That is involuntary servi-

> tude. And nobody wants to do it. *But what we are talking about here is where the employment is by duress or coercion.* And that is all that the bill provides for. [Emphasis supplied.]

It should be noted that by omitting from the Hobbs Act the exception in the 1934 Act for wage payments, Congress did more than merely undo this Court's decision on the precise issue in the *Local 807* case, i. e., that the exception for wage payments applied to the coerced payment of "wages" even though the employer had refused to accept the proffered services, i. e., the "stand-by" practice. Instead, Congress entirely eliminated the exception for wage payments. Indeed, so strongly did Congress feel as to the implications which it saw in the *Local 807* decision that the House rejected Mr. LaFollette's substitute which would have merely amended the 1934 Act to provide that the term "the payment of wages by a bona fide employer to a bona fide employee" should not be construed to include payments obtained by the use or threatened use of violence to personal property. 91 Cong. Rec. 11919–11922. Similarly, as the majority of the court below noted, the House rejected the effort of Congressman Celler to amend the bill from the floor by inserting a stipulation that extorted property should not include "wages paid by a bona fide employer to a bona fide employee". 91 Cong. Rec. 11913–11917. Not only was this amendment

defeated but the debate on it made clear the prevailing view that such solicitude toward the forced payment of wages would destroy the principal intended effect of the bill and preserve the strictures of the *Local 807* case. (R. 179.)

The entire opposition to the Hobbs bill was that it could be applied to "traditional" activities of labor unions. Its proponents insisted that the prohibitions against the use of violence to obstruct commerce should be as applicable to labor unions as to others. Thus, it does not avail petitioner to characterize this case as one in which "petitioner was seeking to enforce a closed shop contract by preventing non-union unloading and to obtain a day's work for a union member" (Pet. 9). For this argument that petitioner should be free, under the Hobbs Act, to obstruct commerce by violence for the purpose of enforcing closed shop arrangements was made in specific terms during the debate on the Hobbs bill, and ignored. Thus, Representative Havenner stated (91 Cong. Rec. 11915):

> The farmers of the country contend that they should have the right to haul their produce from their farms to the cities and deliver it in their own trucks to the produce dealers and merchants and warehouses in the cities. But in most of the cities of America the teamsters unions have, through collective bargaining, entered into closed-shop contracts with these produce dealers

and merchants and warehouse proprietors to do all of their hauling for them. Obviously, if the farmers are permitted to haul and deliver their own produce to these merchantile establishments and warehouses, the effect of collective bargaining, closed-shop agreements between the merchants and warehouses and the transportation unions would be nullified, and a system of open-shop transportation would be established instead.

This would be fatal to collective bargaining in the field of truck transportation.

The proponents of this bill assert that it would have no injurious effect upon legitimate labor unions, and profess to be concerned only with racketeering and extortion. They would, inferentially, brand everyone who opposes the measure as sympathetic with extortion and racketeering.

This sort of argument is, of course, too preposterous for serious consideration. What the bill really does is to classify as racketeering any effective effort by labor unions to insist that closed-shop agreements which have been arrived at through years of collective bargaining shall not be destroyed by open-shop competition from areas outside of the areas where these closed-shop agreements are in effect.

Again, Title II of the Hobbs Act provides that nothing in the Act shall be construed to repeal, modify or affect Section 6 of the Clayton Act, the Norris-LaGuardia Act, the Railway

Labor Act, or the National Labor Relations Act. In the House, Representative Celler offered a substitute which would have provided that *"No acts, conduct, or activities performed in connection with objectives which are lawful* [under the same four statutes] shall constitute a violation of this Act." [Emphasis supplied.] 91 Cong. Rec. 11919. Here again is petitioner's basic contention that the Act does not apply to the obstruction of commerce by violence in the form of robbery or extortion for the purpose of achieving such an otherwise legitimate union objective as the employment of union members. The House rejected the Celler amendment after Mr. Hobbs had argued against it by the analogy that "Picketing is lawful, but does that mean that a picket because he is so engaged should not be punished for stealing if he does so while picketing." *Ibid.*

The enactment of the Hobbs Act, minus the earlier exemption for wage payments, in the face of opposition based upon such grounds, and plus the specific rejection of petitioner's present contention, embodies a clear Congressional purpose to punish the obstruction of commerce by the use or threat of violence to compel employment of undesired labor, no matter by whom or for what ultimate purpose such force is exerted.

As the majority opinion points out, its decision goes no further than this. There is no occasion

here to consider whether the act covers any other activity on behalf of a union.[4] On petitioner's own interpretation of the facts, violence here was exerted to compel a payment which, without the violence, would not be made at all. That clearly is extortion within the definition of the Hobbs Act.

2. There is no merit in petitioner's contention that his acquittal is required by virtue of the action of the Court of Appeals in directing an acquittal of the union on the ground that there was insufficient proof of the union's authorization or ratification of petitioner's acts to meet the standard fixed by Section 6 of the Norris-LaGuardia Act (47 Stat. 71, 29 U. S. C. 106). The fact that the perpetration of a crime by an agent cannot, under the strict rules of criminal agency, and the stricter standard established by the Norris-LaGuardia Act, *supra,* be imputed to the principal, does not compel any inference that the agent was not himself guilty or that he did not have the "plan or purpose" to violate the act. Under the Hobbs Act, petitioner was criminally liable whether he was committing the crime charged within or without the scope of his employment, or whether his criminal acts were

[4] The trial judge pointed out in his instructions that acts made legal by the Norris-LaGuardia and National Labor Relations Acts are exempt from the provisions of the Hobbs Act (R. 140) and listed the activities which, under the Norris-LaGuardia Act, could not be restrained (R. 141–142).

or were not (Pet. 12), "* * * the policy of the union, which it was his duty to enforce." The sufficiency of the proof to establish liability of the union is, therefore, irrelevant to the sufficiency of the proof as to petitioner.[5]

3. Petitioner also contends (Pet. 13–14) that even if the evidence did establish a violation of the statute, his conviction should be reversed on the ground that the trial court did not adequately instruct the jury that they must find a specific criminal intent.

Initially, it should be noted that since petitioner made no request for the instruction he is claiming to be necessary, he may not now complain of its omission. Rule 30, F. R. Crim. P. He did request the following instruction (R. 148):

> 6. It is not the purpose of the law under which these defendants have been indicted to prevent labor unions from attempting to obtain employment for their members. The use of violence or the threat of violence for such a purpose, while possibly punishable under some law, is not punishable under this indictment.

This request raised no question of specific criminal intent, but, as the petitioner frankly states, simply embodied his view of the scope of the

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[5] Petitioner seems to suggest that if the authority delegated to petitioner by the union involved (Pet. 12) "a lawful mission," he could not be found guilty of the crime charged if he departed thereafter from the scope of his delegated power. This proposition defeats itself by mere statement.

Act, i. e., "that there would not be a violation if his intent were merely to obtain employment for a member of his union" (Pet. 14). As discussed in point 1, *supra,* that request embodies an erroneous interpretation of the Hobbs Act, and was therefore properly refused.

Judge Staley's dissent (R. 189–195) as to the sufficiency of the charge is based on a similar misinterpretation of the law. He seems to be of the view that the use of the word extortion, despite its statutory definition, requires felonious intent, and that such felonious intent requires a corrupt motive which would not be present if petitioner was acting for the benefit of his union and not for personal gain. Even at common law, felonious intent is not the equivalent of motive. A person may be guilty of a criminal offense if he intends to do what the law prohibits in this case to take property from another by violence, whatever justification there may be in his own mind for his action. Cf. *Cleveland* v. *United States,* 329 U. S. 14, 20.

The trial judge explained the offense in the terms of the statute (R. 137–138, 139–140, 144) and, in view of the detail with which the statute defines the crime, we submit that the charge was adequate. The requisite criminal intent is spelled out in the statute. Under Section 5, the violence must be "in furtherance of a plan or purpose" to do anything in violation of Section 2. That

section, so far as relevant, punishes anyone who obstructs commerce by extortion. A plan or purpose to do an act in violation of Section 2 thus necessarily requires a plan or purpose to obstruct commerce by extortion, i. e. the specific intent to perform the acts which the statute makes a crime.

Ordinarily, extortion would be deemed a word of art, and, if it alone were used in the statute, the decision of this Court in *Morissette* v. *United States,* 342 U. S. 246 would, as petitioner contends, require that it be explained in the judge's charge. But here the statute itself does what this Court thought the judge should have done in the *Morrissette* case; it defines the term extortion in simple, understandable terms. There was no necessity for the trial judge to add anything to the statutory definition that extortion "means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right." We have difficulty in understanding the view of Judge Biggs that wrongful should have been further defined. He properly rejects the position of Judge Staley that there must be a corrupt motive which would not be present if petitioner was acting only for the benefit of his union. As pointed out above, the only intent which the statute requires is the specific intent to obstruct commerce by extortion, i. e., by obtaining property of another through force. If,

then, "wrongful" does not embrace motive, it can mean only what Representative Hobbs said it meant, "unlawful" (Hearings before Subcommittee No. 3 of the Committee on the Judiciary, 77th Cong., 2d sess., p. 227).[6] But there was no claim here that the use of force was lawful or "rightful," as opposed to "wrongful." There may be situations where there could be such an issue, e. g. whether the force was properly used under color of office or properly used in self defense. Since, however, no such defense was raised, a definition of the term "wrongful" would have served no useful purpose.

The statute by its terms makes it a crime to use force and violence with the plan or purpose (the intent), to obstruct commerce by obtaining the property of another through the wrongful use of violence and fear. The statute leaves nothing for definition. The trial judge could therefore properly charge the jury in the clear and definite words of the statute.

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[6] In the 1934 Act, "wrongful" was defined as "in violation of the criminal laws of the United States or of any State or Territory."

CONCLUSION

The questions presented were correctly resolved by the court below. This is the only case in which the points sought to be presented here have been raised. There is, therefore, no conflict of decision. Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1952.

U. S. GOVERNMENT PRINTING OFFICE: 1952